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T-083 P.001 F-187

PATTON BOGGS LLP
ATTORNEYS AT LAW**OFFICIAL**1660 Lincoln Street, Suite 1900
Denver, CO 80264-1901
303-830-1776

Facsimile: 303-894-9239

To:	DeShone Martino, Examining Group 1600
Company:	Commissioner Of Patents And Trademarks
Fax Number:	1-703-872-9306
Phone Number:	1-703-306-4083
Application No.:	09/837,562
Total Pages	
Including Cover: 84	
From:	Elaine C. VonSpreckelsen, Sec. to Carl A. Forest
Sender's Direct Line: 303-894-6163	
Date:	January 28, 2004
Client Number:	012439.0104PTUS (Formerly 12439.101B)

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Attached please find the following documents to be entered in the above application:

1. Response To Notice Of Improper Request For Continued Examination (RCE) (2 pages)
2. Copy of Notice Of Improper Request For Continued Examination (RCE) mailed January 8, 2004 (2 pages)
3. Copy of response to Final Office Action mailed July 28, 2003, with Declaration Of Edward Larry McCleary attached, faxed October 28, 2003 with fax confirmation report (24 pages)
4. Supplemental Submission (14 pages)
5. Declaration Of Jan F. Baumgardner, M.D., with exhibits (41 pages)

If you should have any questions, please do not hesitate to contact me. Thank you for your assistance in this matter.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**JAN 28 2004**

Patent Application Serial No. 09/837,562)	Group Art Unit: 1623
Filing Date: April 19, 2001)	Examiner: McIntosh, Traviss C., III
For: Composition And Method For Normalizing Impaired Or Deteriorating Neurological Function)	Docket No: 012439.0104PTUS (Formerly 12439.101B)
Inventor: Edward Larry McCleary)	Confirmation No.: 7515
)	Paper No.: 14

OFFICIAL**CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8**

I hereby certify that this correspondence, along with all papers referred to as being transmitted, are being facsimile transmitted to the Patent and Trademark Office Fax No. (703) 872-9306.

January 28, 2004
Date

Elaine C. VonSpreckelsen
Elaine C. VonSpreckelsen

COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

Attn: DeShone Martino, Examining Group 1600

RESPONSE TO NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)

Applicant has received a Notice Of Improper Request For Continued Examination (RCE), which was mailed on January 8, 2004. A copy of this Notice is enclosed. The Notice states that the RCE was not accompanied by a submission as required under CFR 1.114.

It is respectfully submitted that the Notice was sent in error. A response to the outstanding Final Office Action dated July 28, 2003 was submitted on October 28, 2003. This response included an Amendment. An Advisory Action was received on December 16, 2003 indicating that the Amendment would not be entered. A copy of this response is enclosed. The RCE form has a box 1(a) that indicates "If a Final Office Action is outstanding, any amendment filed after the Final Office Action may be considered as a submission even if this box is not checked." MPEP 706.07(h) II also states that a

Serial No. 09/837,562
Response To Notice Of Improper Request
For Continued Examination (RCE)
Page 1

previously filed amendment after final (whether or not entered) may satisfy the submission requirement.

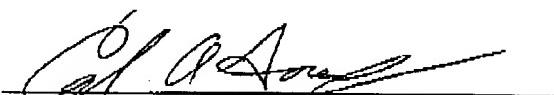
If a specific request to consider the previously submitted response is required to meet the RCE requirements (which is not believed to be the case), then please consider this as such a request.

In case the previously submitted response is somehow deemed to be ineffective as a submission, then a Supplemental Submission is enclosed herewith. This Supplemental Submission includes a Declaration Of Jan F. Baumgardner, M.D., with two exhibits. Please enter this Supplemental Submission in any case.

For the above reasons, it is believed that the RCE request filed on December 24, 2003 was proper and no additional fee is seen to be required. However, if an additional extension of time fee of \$475 for a small entity third-month extension is required, please consider this to be a request of an extension of time of an additional month and charge the fee to Deposit Account No. 50-1848. If any further fee is required, please charge it to Deposit Account No. 50-1848.

Respectfully submitted,
PATTON BOGGS LLP

By:



Carl Forest, Reg. No. 28,494
Telephone: (303) 894-6114
Facsimile: (303) 894-9239
Customer No.: 24283

Serial No. 09/837,562
Response To Notice Of Improper Request
For Continued Examination (RCE)

Page 2

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UNITED STATES PATENT AND TRADEMARK OFFICE

12439.104

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,562	04/19/2001	Edward Larry McCleary	12439.101B	7515
24283	7590	01/08/2004		

PATTON BOGGS
 PO BOX 270930
 LOUISVILLE, CO 80027

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JAN 12 2004

Patton Boggs LLP

EXAMINER	
MCINTOSH III, TRAVISS C	
ART UNIT	PAPER NUMBER
1623	

DATE MAILED: 01/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Resp to Notice of Improper
 Action Due RCE
 Due Date 1/28/04
 Docketed On 1/13/04
 By MAB Atty Cay



Commissioner for Patents
 United States Patent and Trademark Office
 Washington, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FLING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE

DATE MAILED:

NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)

The request for continued examination (RCE) under 37 CFR 1.114 filed on 12-24-03 is improper for reason(s) indicated below:

- 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
- 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
- 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on _____. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
- 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
- 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

Note: If a request for a continued prosecution application (CPA) under 37 CFR 1.53(d) has been filed in the utility or plant application (including a previously filed CPA) that was filed on or after May 29, 2000, the request for a CPA has been treated as a RCE because the CPA practice no longer applies to such application. The constructive RCE, however, is improper for reason(s) indicated above.

A copy of this notice MUST be returned with any reply.

Direct the reply and any questions about this notice to:

D. Stone / Patton Examining Group 160

(703) 30 6-4083
 FORM PTO-2051 (Rev. 3/2001)

Confirmation Report - Memory Send

Time : 10-28-03 02:40pm
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PATTON BOGGS LLP
ATTORNEYS AT LAW

1600 Lincoln Street, Suite 1800
Denver, CO 80264-1901
303-830-1776

Faximile: 303-894-8239

To:	Examiner Traviss C. McIntosh, III
Company:	Commissioner Of Patents And Trademarks
Fax Number:	1-703-305-3014
Phone Number:	1-703-308-9479
Application No.:	09/837,562
Total Pages Including Cover:	24
From:	Elaine C. Vanspreckelsen, Secretary to Carl A. Forest
Sender's Direct Line:	303-894-8163
Date:	October 28, 2003
Client Number:	12438.104US (Formerly 12438.101B)
Comments:	

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Attached please find the following documents to be entered in the above application:
 1. Amendment and Remarks responsive to the Final Office Action mailed July 28, 2003 (16 pages)
 2. Declaration Of Edward Larry McCleary (7 pages)
 If you should have any questions, please do not hesitate to contact me. Thank you for your assistance in this matter.

MCS
10/29/03

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